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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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DATE: MAR 1 2 2012 OFFICE: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The director reopened the proceeding on the petitioner's motion, and again denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the sciences and as a member of the professions holding an advanced degree. The petitioner seeks employment as an agricultural economist. At the time she filed the petition, the petitioner was a postdoctoral research associate and international grains analyst at Iowa State University (ISU), Ames. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel and copies of previously submitted exhibits.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner claims eligibility for classification as an alien of exceptional ability in the sciences. The record readily establishes that the petitioner, whose occupation requires at least a bachelor's degree and who holds a doctorate, qualifies as a member of the professions holding an advanced degree. A determination regarding the petitioner's claim of exceptional ability would be moot. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on November 10, 2009. On that form, the petitioner indicated that she was the beneficiary of an approved Form I-140 petition, receipt number [redacted], filed in 2008. USCIS records show that [redacted] filed that petition with an

approved labor certification. Rather than adjust status through that approved petition, the petitioner left her position at Global Insight to pursue further training at ISU.

In a statement accompanying the petition, the petitioner described her work:

> I have extensive research experience in the nationally crucial field of international trade and agricultural policy research . . . and have made original and significant contributions to the field of agricultural economics. . . .
>
> I am currently an International Grains Analyst at the Food and Agricultural Policy Institute, Iowa State University at Ames, IA. My work involves the following:
>
> - Developing and maintaining rigorous econometric models of the world agricultural markets.
> - Use models to conduct research in international grains markets and analyze policies affecting grain markets.
> - Expansion of biorenewables in the US focusing on the outlook for biofuel and crops used for biofuel production.
> - Analyze the impact effect of biofuels growth on the level and volatility of crop prices. Effects of policy changes on biofuels production and crop prices.
> - Communicate research results (agricultural projections and policy analysis to the US house and senate agricultural committees, United States Department of Agriculture (USDA) analysts, commodity groups and the public through oral and written presentations and publications.
> - Aiding various commodity groups such as the National Wheat Growers Association to evaluate federal farm policy alternatives in their efforts to prepare for Congress work on the next farm bill. Help congress understand the impact of alternative policies.
>
> . . . One of the major challenges to US agriculture remains in reducing oil dependency, through focus on alternative sources of energy from food crops and reducing green house gas emissions and without sacrificing food for fuel. This has led to increase[s] in the prices of food crops. . . . Effective modeling of the international grains market is imperative to help determine effective risk management tools for crop and livestock producers, and analyze how government policy affects risk management strategies. This has become even more prominent with the use[] of food crops as feedstock for biofuel production. . . . My research focuses on analyzing the impacts of US ethanol production on crop acreage, crop and livestock production and prices, trade, and food costs under current tax credits and trade policies. . . .
>
> As an Economist at Global Insight Inc., one of the largest economic consulting and forecasting companies in the world, my work centered on analyzing the impact of alternative domestic policies and exchange rates on US trade for government agencies

> and providing in depth analysis of topical issues in agriculture to the US farming community and private bodies to aid them in decision making. . . . The study found that market development increased U.S. competitiveness by boosting the U.S. share of world agricultural trade. Higher cash receipts increased annual farm net cash income by $430 million, representing a $4 increase in farm income for every additional $1 increase in government spending on market development.

(Emphasis in original.) The petitioner asserts that she is "a superior researcher who will advance the national interest," and therefore "the labor certification process would work against the national interest." The documented approval of a labor certification on the petitioner's behalf, in 2008, neutralizes any hypothetical argument about difficulties she might encounter in seeking such a labor certification. Whether or not the petitioner could obtain an approved labor certification is no longer an open question, because she already did, even if she then left that employment (at Global Insight) for reasons that the record does not explain.

Five witness letters accompanied the initial submission. [redacted] stated: "I have never personally worked with [the petitioner]." The record shows that [redacted] and the petitioner both earned doctorates in economics from the University of Kansas in the same year, 2004. [redacted] stated:

> [The petitioner] is the author of many studies on international trade and agricultural markets. She has made several original contributions to agricultural economics. [The petitioner's] pioneering work on Geographical indications (GIs) and intellectual property rights has been highly recognized throughout the academic community and has been referred to in a report by the EU Commission on strengthening international research on geographical indication. . . .
>
> [The petitioner] is currently the internationally recognized grains analyst of [redacted] . . . [redacted] annual baseline projection, the "U.S. and World Agricultural Outlook," is widely used by the international professional, academic community as well as industry.

The remaining witnesses were all at North Dakota State University (NDSU) while the petitioner was a research assistant professor there from 2004 to 2006. [redacted], now an associate professor at Arizona State University, was previously on the NDSU faculty during the petitioner's time there. [redacted] excerpted below, has many similarities to [redacted]'s letter:

> [The petitioner] is the internationally recognized grains analyst of [redacted] annual baseline projection, the "U.S. and World Agricultural Outlook" . . . , is widely used by the international professional, academic community as well as industry. I know [the petitioner] as an outstanding contributor to this outlook. . . .

> [The petitioner's] other studies on international trade policy and world markets are also invaluable for economists as well as US producers. She has made outstanding and original contributions to the field of agricultural economics. Because of her international recognition as a researcher, her opinions and suggestions are referred to at major conferences in the United States. Her studies on geographical indications (GIs) have made a significant contribution to the study of trade distorting issues and have been referred to in a report by the EU Commission on strengthening international research on geographical indication.

The similar, at times identical, wording of the two quoted letters calls into question their actual authorship. Furthermore, the above letters are not, themselves, evidence that the petitioner is "internationally recognized" or that "the EU Commission" has relied on her work. The AAO will consider expert witness letters as expressions of opinion, rather than as statements of fact. *See Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Neither of the above witnesses provided any first-hand evidence to support their claims of fact, nor did they establish that they are in a position to speak for "the EU Commission" or any other named body.

Some similarities also exist between the two letters quoted above and the letter fro[redacted] now an applied agricultural economist at the International Center for Agricultural Research in the Dry Areas, Aleppo, Syria, was a researcher at NDSU from 2002 to 2006. [redacted] stated:

> [The petitioner's] original work on geographical indications (GIs) is internationally recognized and makes a unique contribution to the current debate on providing stronger protection to intellectual property at the World Trade Organization. In addition, [the petitioner's] studies on the competitiveness of US wheat and soybean markets are crucial to the field of agricultural economics.

NDSU [redacted]o stated:

> I have known [the petitioner] very well since September 2004, when she joined the Center for Agricultural Policies and Trade Studies in the Department of Agribusiness and Applied Economics as a research assistant professor. . . . While she was in the Center, [the petitioner] was involved in international agricultural trade research, including the impact of bi-lateral and multi-lateral agreements, export controls, exchange rates on US agricultural trade. She did an exceptionally excellent job in conducting the research projects.

[redacted] stated that the petitioner "has made novel and original contributions to the field of U.S. agricultural trade," but provided no specific information about those contributions.

[redacted], previously a research assistant professor at NDSU and now [redacted] stated:

> I have frequently relied on [the petitioner's] expertise. . . .
>
> Besides her contribution to [redacted] policy analysis studies, [the petitioner] has made outstanding contributions in the field of agricultural economics. In particular, she makes an original and critical contribution to the studies on Geographical Indications and the Trade Related Intellectual Property Rights Agreement (TRIPS) which is a sensitive topic in the current World Trade Organizations negotiations and a major concern to the U.S. In addition, her studies on the competitiveness of US wheat markets, soybean and export credit are extremely important and provide significant insight to US policy makers to aid them in decision making.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 165.

The letters considered above primarily contain bare assertions of the petitioner's influence and reputation without specifying how the petitioner's work has influenced the field. The record contains no corroboration from, for instance, any United States policymaking body to confirm that the petitioner's work has, indeed, had a significant impact on policy. As previously explained, the witnesses' secondhand claims of fact cannot serve in place of documentary evidence of those facts.

The petitioner submitted copies of published reports, articles and conference presentations that she co-authored between 2003 and 2009. The significance and impact of this work is not self-evident from its existence or its submission, because the production of scholarly research is an inherent part

of her academic position. To show that the petitioner's work is particularly important or influential in her field, external evidence is necessary.

An exhibit list submitted with the petition indicated that other researchers had cited the petitioner's published work a "total [of] 13 times." The submitted printouts from http://scholar.google.com, however, showed only ten citations, at least three of which were self-citations by the petitioner's co-author, Prof. Koo. None of the petitioner's cited works appeared later than 2006.

The petitioner submitted a partial copy of "United States – Subsidies on Upland Cotton: Arbitration Under Article 22.6 of the DSU and Article 4.11 of the SCM Agreement (WT/DS267) / Answers of the United States to the Questions from the Arbitrators," February 13, 2009. The document listed one of the petitioner's articles as exhibit 97. The petitioner appears to have counted this as a citation of her work. Because the petitioner submitted only a fragment of this document, it is not clear why the document included one of her articles as an exhibit. Therefore, this document does not show the extent of her influence on agricultural policy.

On March 8, 2010, the director issued a request for evidence (RFE), instructing the petitioner to submit evidence to support various claims from the initial submission. The director asked whether the petitioner had "published any work since 2006 which has been cited by anyone. The director addressed the petitioner's concerns about the "highly inefficient" labor certification process by noting the three-month turnaround time (from filing to approval) of the labor certification previously filed on the petitioner's behalf.

In response to the RFE, the petitioner acknowledged that her complaints about the labor certification process arose from anecdotal accounts from acquaintances, rather than from her own experience. Regarding her work, the petitioner stated:

> One of the most recent impacts of my work as an international grains analyst at [redacted] has been the use of the [redacted] by the Environmental Protection Agency (EPA) to estimate the indirect Green House Gas (GHG) emissions from land-use change. I was responsible for estimating the international grains section of the model which provides acreage projections resulting from the impact of biofuel production on international land-use changes for major crops. This information was used by the EPA to set the New Renewable Fuel Standard (RFS2) which incorporates changes mandated by the 2007 Energy Independence and Security Act (EISA).

To support the above claim, the petitioner submitted a copy of a "Policy Update" published by the International Council on Clean Transportation (ICCT), which stated, in a footnote, that the EPA used FAPRI's model as discussed above. The petitioner submitted nothing from the EPA itself to establish how much the petitioner's contribution influenced the RFS2. Many organizations act in advisory capacities to government agencies. Therefore, the EPA's use of FAPRI's models, including the petitioner's contributions, appears to reflect the standard working relationship between the two entities rather than an unusually influential contribution on the petitioner's part. No blanket

waiver exists for employees of such advisory organizations, and therefore the petitioner's very employment with [redacted] is not, by itself, evidence of eligibility for the national interest waiver.

Furthermore, the ICCT publication is dated April 2, 2010, five months after the petition's filing date. Therefore, even if the EPA's use of FAPRI's model were strong evidence of eligibility, it could not show eligibility as of the filing date. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

Regarding the impact of her published work, the petitioner stated:

> International trade in agricultural economics is very specialized, so there are relatively fewer number [*sic*] of publications and citations in this area. In this respect, I believe the number of citations I have is quite respectable.
>
> . . . Due to international circulation of most research work electronically through databases, downloaded statistics are another way to judge the popularity of one's work. . . . [M]y listed works have been downloaded 3,633 times since their listing date indicating their popularity and acceptance. Intangible benefits are often not seen through citations but arise when parties such as farmers, producers, agribusinesses and government agencies consistently rely on research to keep abreast of new developments and to make decisions which is often the case with my work.

There is no way from the record to determine how many of those who downloaded the petitioner's work went on to change their practices or policies as a result.

The petitioner submitted parts of a September 2008 printout from http://ageconsearch.umn.edu, providing "AgEWcon Web Statistics – January 2001-May 2008." One submitted excerpt provided download statistics for 15 articles. One of the petitioner's articles showed 79 downloads. Twelve of the other 14 listed articles showed more than 79 downloads. Therefore, even if the number of downloads were proportional to the influence of the article, the fragment submitted by the petitioner would identify her work as among the least influential of the 15 articles listed.

The director had asked the petitioner for evidence of cited articles that appeared after 2006. The petitioner, in response, showed recent citations of her work, but the cited articles by the petitioner (as opposed to the citing articles by others) all date from 2006 or earlier.

The petitioner submitted two new witness letters [redacted] at Nanjing (China) Audit University, stated:

> I consider [the petitioner] as one of the experts in the international grains markets. As a co-author of the [redacted] "U.S. and World Economic Outlook" her work provides projections of production, consumption, stocks, and trade figures for major agricultural grains producers, exporters and importers in 37 countries. The impact of [the petitioner's] work is far reaching. She provides a thorough analysis of the world grain markets. . . . [The petitioner's] work has very importa[nt] implications in the area of energy policy. . . . [The petitioner's] perspective article on India and China's search for alternate ethanol sources provides a key insight as these countries play a very important role in the global market.

[redacted] stated:

> I know [the petitioner] through her work as an international grains analyst at [redacted] which is recognized worldwide as one of the top commodity analysis organizations in the world. . . . I hold [the petitioner] in high regard and her work in the international trade area is highly beneficial not only to the academic community but also extremely useful to farmers, policy makers and other key decision makers. In addition [the petitioner's] technical reports and perspective articles provide an excellent insight on key agricultural trade and policy issues affecting US agriculture.

Like the previous group of letters, the two letters quoted above contain the assertion that the petitioner is an influential figure in her field, but provide few specific details except to state that the petitioner worked for [redacted] which, in turn, produces influential publications.

The director denied the petition on July 27, 2010, stating that the petitioner had not submitted objective evidence to distinguish herself from other qualified professionals in her field. The petitioner filed a motion to reopen and reconsider that decision, and submitted two further witness letters along with supporting background materials. [redacted] coordinator of USDA International Agriculture Baseline Projections, discussed the role of [redacted] and stated that the petitioner "provides market intelligence on key factors impacting world grain markets and analyzes agricultural policies that affect production, consumption, prices and trade in 37 countries." [redacted] did not claim deep familiarity with the petitioner individually, basing his comments instead on his overall experience with [redacted] staff over the years. The implication is that, because [redacted] serves an important purpose, the petitioner must, as a [redacted] staffer, be an especially important figure in her field.

The same implied argument is evident in the letter from [redacted] who discussed [redacted] overall role and asserted that that the petitioner "was chosen from a highly competitive pool of national and international candidates" to perform work that "is highly specialized and requires years of experience."

The director granted the petitioner's motion but again denied the petition on November 24, 2010, stating that the petitioner's motion failed to establish that USCIS should have approved the petition.

The director did not dispute the intrinsic merit or national scope of the petitioner's occupation, but found that the petitioner had not distinguished herself from other [redacted] researchers.

On appeal, counsel states that the petitioner "submitted persuasive testimony from independent witnesses from a variety of prestigious public and private research institutions . . . who consistently assert that [the petitioner's] advanced research will benefit the national interest to a substantially greater degree than would a U.S. worker with comparable qualifications." Most of the witnesses are, in fact, connected with either NDSU or ISU, and the remaining witnesses emphasized [redacted] overall role rather than the petitioner's specific contributions thereto. [redacted] whom counsel singles out as an independent witness, was the petitioner's classmate at Kansas State University.

Counsel asserts: "Due to her original contributions and influence in the field, [the petitioner] was chosen to peer review the work of her colleagues." The record shows the petitioner's involvement in peer review, but there is no evidence that this is the result of the petitioner's "original contributions and influence in the field" rather than a general principle that researchers who produce work for peer review should reciprocate by reviewing work by others.

The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel cannot demonstrate the importance of the petitioner's work simply by showing that it took place and then declaring it to be important, or by concluding that "her work could not be replicated by another available U.S. worker with comparable credentials."

Counsel claims that the petitioner's published output and citation rate are unusual in her specialty, but produces no evidence to support such a claim. The petitioner has not addressed the director's observation that there do not appear to be any independent citations of work that the petitioner published after 2006, several years before the petition's late 2009 filing date. This observation is directly relevant to the assertion that the petitioner continues to produce influential work.

Frequently in the appeal, counsel stresses the importance of the petitioner's work with [redacted] at ISU. The most recent correspondence from counsel is a change of address notice, indicating that the petitioner has left Iowa and now resides in Virginia. USCIS records place the petitioner at the Union of Concerned Scientists. The available evidence, therefore, indicates that the petitioner has left ISU. This change appears to be significant, given that the petitioner's employment at ISU had formed the backbone of many of counsel's claims on appeal. Certainly, the petitioner can no longer argue that she will continue to serve the national interest through her future work at ISU. When reporting the petitioner's change of address, counsel neglected to include evidence to show that the petitioner's current work at the Union of Concerned Scientists parallels her prior [redacted] work. The AAO acknowledges that the petitioner seeks a waiver of the job offer requirement. At the same time, when the waiver claim itself rests on the petitioner's work for a particular employer, then a change of employment necessarily affects the overall claim.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.